

**MINUTES
of the
SEVENTH MEETING
of the
INDIAN AFFAIRS COMMITTEE**

**November 2, 2015
Room 307, State Capitol
Santa Fe**

The seventh meeting of the Indian Affairs Committee (IAC) for the 2015 interim was called to order at 10:10 a.m. by Senator John Pinto, co-chair, on Monday, November 2, 2015, in Room 307 of the State Capitol in Santa Fe.

Present

Sen. John Pinto, Co-Chair
Rep. Sharon Clahchischilliage, Co-Chair
Sen. Ted Barela
Rep. D. Wonda Johnson
Rep. Georgene Louis
Rep. James Roger Madalena
Sen. Richard C. Martinez
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr.
Rep. James E. Smith

Advisory Members

Rep. Eliseo Lee Alcon
Sen. Carlos R. Cisneros
Rep. Patricia Roybal Caballero
Rep. Nick L. Salazar

Absent

Rep. Zachary J. Cook
Rep. Yvette Herrell
Sen. Nancy Rodriguez
Sen. John C. Ryan
Sen. William P. Soules

Sen. Stuart Ingle
Sen. Daniel A. Ivey-Soto
Rep. Patricia A. Lundstrom
Sen. Cisco McSorley
Sen. George K. Munoz
Rep. Debbie A. Rodella
Sen. Clemente Sanchez

Staff

Peter Kovnat, Staff Attorney, Legislative Council Service (LCS)
Mark Edwards, Staff Attorney, LCS
Michelle Jaschke, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

All handouts and other written testimony are included in the meeting file.

Monday, November 2

Welcome

Senator Pinto welcomed the committee and members of the audience and asked committee members and guests to introduce themselves. He asked that Representative Clahchischilliage chair the remainder of the meeting.

House Bill (HB) 236 (2015): Fiscal Impacts on Tribal, Water, Colonias, Education and Legislative Capital Funding

Jeff Eaton, research and fiscal policy analyst, LCS, presented an overview of the impact of HB 236 on the Severance Tax Permanent Fund (STPF) and severance tax bonding capacity. The STPF was established by the legislature as a constitutionally protected endowment in 1976 to receive and invest severance taxes collected on natural resources extracted from New Mexico lands. Concerns about depletion of the corpus of the STPF resulted in the statutory changes contained in HB 236. The bill changes the percentage split between bond payments from the STPF and deposits to the STPF from the current 95/5 split to a phased in 86/14 split by 2022.

Members discussed how the legislation contained in HB 236 developed from an "equal cuts" model for fund beneficiaries to a series of phased-in cuts designed to minimize the immediate impact on the Tribal Infrastructure Project Fund (TIPF), the Colonias Infrastructure Project Fund and the Public School Capital Outlay Fund. A member noted that when it became evident that HB 236 was going to pass, the member sought a floor amendment to reduce the negative impact of the bill on the TIPF. Several members noted that passage of that amendment reduced the impact of the proposed cuts contained in HB 236 for the TIPF from an estimated \$12 to \$14 million to \$1.7 million over the next 10 years. Members also discussed the difficulty in deriving a reliable prediction regarding the actual amounts of the cuts over time. Mr. Eaton projected that the TIPF cutbacks will amount to \$170,000 annually over the next 10 years.

One member pointed out that the information presented about HB 236 does not address tribal concerns regarding the \$2 million that was taken from the TIPF to pay for a non-native portion of the Taos water rights settlement as part of the capital projects bill passed during the 2015 special session. A committee member provided an overview of how the capital outlay bill developed during the course of both the 2015 regular and special sessions, and the member described the terms of the ongoing Indian water rights settlement agreement. The member noted that the state is legally bound to provide the total \$12.5 million necessary to comply with the settlement terms at this point and that violation of the agreement would compromise the \$1.3 billion in federal funding that is conditioned on that agreement. The legislator observed that when difficult funding choices have to be made, funds such as the TIPF that appear to have unused fund balances are at risk of being tapped for other purposes, and the legislature enjoys that prerogative. The legislator stated that additional payments for water rights settlements will

have to be forthcoming from the state and, with respect to HB 236, he asserted that the burden of the cutbacks is shared by all of the beneficiaries of the STPF.

Tribal Responses

Gaylord Siow, second fiscale, Pueblo of Laguna, presented a statement from Pueblo of Laguna Governor Virgil A. Siow and described several infrastructure projects, including reconstruction of three roadways, within the pueblo that have been completed over the last three years utilizing the TIPF. Gaylord Siow noted that the pueblo supports the idea proposed by one member to direct gaming revenue to tribal infrastructure projects to ensure that sufficient funding is available. He reported that TIPF funds have helped the pueblo leverage other critical funding for infrastructure projects and asked if there has been any effort at the state level to monitor global oil prices to better predict severance tax bonding capacity for the state. Mr. Eaton responded that his estimate that HB 236 will result in a reduction of \$170,000 annually over the next 10 years is based on the estimate of the state's Consensus Revenue Estimating Group (CREG). Mr. Eaton stated that the CREG does not make revenue projections, but that a new revenue estimate is due in December. It was noted that oil and gas production in the state is at an all-time high, but that prices have been dropping, reducing revenue inflow to the STPF.

Andrew Othole, planning and development director, Pueblo of Zuni, expressed concern about the direction that the state is taking in reducing funding for tribal infrastructure. Mr. Othole stated that the issue of solvency for the STPF is a concern, but that the state is proceeding without understanding the full impact of reducing funds for the TIPF. He also expressed support for the idea of steering gaming revenue into tribal infrastructure, but noted that the Pueblo of Zuni is a non-gaming tribe and depends largely on seasonal cottage industries for revenue. Referencing the *Zuni* lawsuit, Mr. Othole stated that the lack of a tax base in the area has been a primary motivation for past and present legal action with respect to public school capital outlay and operational funding. He explained that the pueblo is targeting sustainable development as an economic driver for the area but that, at present, the unemployment rate ranges from 50 percent to 68 percent. Mr. Othole stated that basic principles of state policy, including a mandate for tribal collaboration, have been ignored in the process of reducing TIPF funding, and he called for a legislative inquiry to examine why tribal collaboration has not taken place and what the consequences will be for future tribal infrastructure development.

Jeff Haozous, chair, Fort Sill Apache Tribe, stated that if the purpose of the meeting was to hear tribal concerns with respect to the removal of funds from the TIPF, that purpose had been obscured. He observed that the \$2 million taken from the TIPF affects every tribe in the state, not just the Pueblo of Santa Clara, which had TIPF funding for an infrastructure project withdrawn in this process. Mr. Haozous stated that the responsible thing for the state to do is to raise severance taxes, not to take money from the most vulnerable populations. He asserted that it is not the purpose of government to endow funds, but rather to generate revenue and spend it appropriately.

Wainwright Velarde, council member, Jicarilla Apache Nation, shared his tribal commission's conclusion that tribes cannot just "roll over" and accept the TIPF changes. He stated that the Jicarilla Apache Nation understands the budget issues at hand for the state but that the infrastructure needs are so great and so visible on tribal lands that other solutions must be found. Mr. Velarde expressed the disappointment of the Jicarilla Apache Nation in HB 236, stating that it balances the budget on the backs of the poor. He also expressed appreciation for the amendment, but he observed that all of the tribes will now compete for fewer dollars. Mr. Velarde charged that the \$2 million taken from the TIPF for the water rights settlement was not fair or right and that HB 236 will create more problems than it resolves. He asked that a better legislative basis for action be established than "robbing the TIPF or reducing the fund". Mr. Velarde also called for a legislative inquiry with regard to the legality of the use of TIPF funds for water rights settlements, and he beseeched the committee to explore the possibility of using gaming revenue to restore funding for tribal infrastructure projects.

Jason John, water manager, Navajo Nation, described the vast extent of unmet need for water infrastructure projects on the Navajo Nation. He presented an overview of the water and wastewater projects that have been completed or are in planning phases using TIPF funding in the Ramah, To'hajiilee, Mariano Lake, Alamo, Counselor, Lybrook, Standing Rock and Shiprock chapters, among others. The Navajo Nation has been using around \$2 million per year in TIPF funding for water infrastructure projects, many of which have been identified by the Navajo Area Indian Health Service as critical needs.

Chavez John, director, Navajo Division of Community Development, protested the TIPF reductions on behalf of the more than 100,000 voters residing in the Navajo communities he represents. Chavez John elaborated on the tremendous need of those communities for basic services and infrastructure. He asked that the committee seek to reestablish state and tribal collaboration in accordance with the provisions of the State-Tribal Collaboration Act, noting that such collaboration has not taken place in the case of the TIPF funding reductions.

Casey Begaye, manager, Capital Improvement Office, Navajo Nation, reiterated the need to adhere to the provisions of the State-Tribal Collaboration Act and detailed the extensive planning that goes into the Navajo Nation's capital program. Gil Arviso, director for engineering services, Navajo Nation, stated that much of the criticism leveled at the Navajo Nation with regard to not planning and completing projects is inaccurate. He talked in detail about the planning processes, noting that the Navajo Nation invests its own capital in the planning and assessment process for all of the Eastern Navajo Agency chapters. He suggested that it would behoove the committee to reexamine the impact that the TIPF cutbacks will have on Native American populations, and that governor-to-governor and state/tribal collaboration are essential. It was noted that the State-Tribal Collaboration Act applies only to executive agencies, not to the legislative branch.

Members expressed support for increasing funding for TIPF purposes and for reexamining what the legislature and the executive branch might do to generate additional

revenue for tribal infrastructure. Some members expressed concern that the TIFP had become at risk for being used for purposes not contemplated in statute as a result of failure to both initiate and complete projects, particularly on the part of the Navajo Nation. One member asked if there was any movement to establish a New Mexico office of the Navajo Nation to more efficiently handle capital projects and related issues. Chavez John reported that the Navajo Nation is working on standardizing processes for capital projects, including assisting chapters with land use planning and procurement issues, and streamlining the approval processes.

Amber Kanazbah Crotty, council delegate, Navajo Nation, asked that the committee look at the human aspect of the funding cutbacks and described environmental and mental health emergencies that run throughout the many chapters she represents in both New Mexico and Arizona. Ms. Crotty stated that Navajo health issues were a primary driver for establishing the TIFP, and she noted that the jobs and services that result from infrastructure development are an important adjunct to that issue. She described the hardships for widows, orphans and the sick on the Navajo Nation and asked how the Navajo Nation can care for babies contaminated by uranium in utero without basic services such as running water and wastewater systems. Ms. Crotty explained that the recent water crises resulting from mining spill contamination of the San Juan and Animas rivers prevent children from safely playing near the rivers and that there is a real need for other infrastructure to serve Navajo youth and schoolchildren. She described a self-fulfilling system of neglect whereby children who are not able to access school bus services due to a lack of infrastructure do not attend school and are therefore not counted for the school system's operational funding. She said that the Navajo Nation has developed a state task force to identify and address these challenges and define their impact.

Ms. Crotty questioned how the hold harmless provisions for tribes reportedly included in HB 236 would actually function with less funding available, and she asked that the committee listen to the voices of those most in need. She asked Mr. Eaton to provide details of how the annual reduction of \$170,000 in funding for the TIFP had been estimated. In addition, Ms. Crotty asked that the committee consider amending HB 236 to take out the reductions to the TIFP in the upcoming legislative session.

Raymond Concho, director, Planning and Engineering Department, Pueblo of Acoma, reported that the pueblo had provided written comments to the TIFP Board regarding the funding reductions. Contrary to what the executive branch has claimed, he stated, the tribes do plan and develop infrastructure projects carefully and thoughtfully. Mr. Concho described \$150 million in road, water and wastewater infrastructure projects planned for the Pueblo of Acoma, noting that all efforts have recently been steered to water and wastewater projects. He pointed out that ownership of the Acoma infrastructure projects accrues to the state as well as to the pueblo. The preservation efforts now under way at the historic church (named one of the most important and most at-risk sites by a national historic preservation organization) benefit the state tourism industry and the cultural heritage of the pueblo and the state.

Mr. Concho described some of the green projects and practices that the pueblo has worked on with TIPF funding to preserve the unique structures and surroundings on Acoma Mesa, including a waterless composting project. He stated that the Pueblo of Acoma is in compliance with the executive order audit requirements to receive funding and has been in compliance with all of the TIPF guidelines and project deadlines. Mr. Concho asserted that the pueblo has the capacity to proceed with the many infrastructure plans it now has and asked what more the pueblo could do to access funding. He questioned the legality of taking \$2 million from the TIPF to pay legal costs in the water rights settlement case when those expenses do not comply with the TIPF guidelines. Mr. Concho informed the members that the New Mexico Tribal Planner's Roundtable, a group that provides opportunities for tribes to share best practices and programs, will be meeting on November 10, but that the Indian Affairs Department (IAD) has declined to attend. Mr. Concho thanked the committee for the opportunity to provide an update on pueblo plans and activities and to comment on TIPF issues. He invited the committee members to be among the first to use the new waterless composting facilities at the Pueblo of Acoma.

Committee members discussed alternatives for meeting tribal infrastructure needs. One member asked what the IAD is doing to help tribes access funding through the TIPF. Moses Winston, general counsel and legislative director, IAD, stated that the IAD now issues warning letters to tribes that are not in compliance with the requirement that they spend at least five percent of their allotted funds within a specified time frame. Acknowledging that it is unlikely that the provisions of HB 236 will be amended or repealed, some committee members asserted that they would help the tribes by looking for other revenue sources for tribal infrastructure. Similarly, noting that the \$2 million reduction in the TIPF is a separate issue, one member stated that there may be legal remedies for the tribes to pursue in that regard.

Adjournment

There being no further business before the committee, the meeting adjourned at 3:33 p.m.